

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TRANSPERFECT GLOBAL, INC.,
TRANSPERFECT TRANSLATIONS
INTERNATIONAL, INC., AND
TRANSLATIONS.COM, INC.,

Plaintiffs/Counterclaim
Defendants,

v.

MOTIONPOINT CORPORATION,

Defendant/Counterclaim
Plaintiffs.

Case No. CV 10-02590 CW

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Date:
Time:
Dept.: Ctrm. 2
Judge: Hon. Claudia Wilken

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, each of the parties, Plaintiffs TransPerfect Global, Inc., TransPerfect Translations International, Inc. and Translations.com, Inc., (collectively "TransPerfect") on the one hand; and Defendant MotionPoint Corporation ("MotionPoint"), on the other hand, contends that they

1 possess confidential information related to this case. The parties wish to ensure that such
 2 confidential information (as defined below) shall not be used for any purpose other than this
 3 litigation, shall not be made public, and shall not be disseminated beyond the extent necessary for
 4 this case. Accordingly, the following procedure shall be adopted for the protection of the parties'
 5 respective confidential information.

6 The parties acknowledge that this Order does not confer blanket protections on all
 7 disclosures or responses to discovery and that the protection it affords from public disclosure and
 8 use extends only to the limited information or items that are entitled to confidential treatment
 9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 10 14.4, below, that this Protective Order does not entitle them to file confidential information under
 11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and standards that will
 12 be applied when a party seeks permission from the Court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
 17 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
 18 Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and their support
 20 staff.

21 2.4 Designating Party: a Party or Non-Party that designates, pursuant to this
 22 Order, information or items that it produces in disclosures or in responses to discovery as
 23 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
 24 "HIGHLY CONFIDENTIAL – SOURCE CODE."

25 2.5 Disclosure or Discovery Material: all items or information, regardless of
 26 the medium or manner in which it is generated, stored, or maintained (including, among other
 27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
 28 or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a non-testifying consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and

1 organizing, storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated, pursuant to this Order, as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY" or as "HIGHLY CONFIDENTIAL – SOURCE CODE."

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 3. SCOPE

9 The protections conferred by this Protective Order cover not only Protected Material (as
10 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
11 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
12 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
13 However, the protections conferred by this Protective Order do not cover the following
14 information: (a) any information that is in the public domain at the time of disclosure to a
15 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
16 a result of publication not involving a violation of this Order, including becoming part of the
17 public record through trial or otherwise; and (b) any information known to the Receiving Party
18 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
19 obtained the information lawfully and under no obligation of confidentiality to the Designating
20 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations imposed by
23 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
24 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
25 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
26 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
27 including the time limits for filing any motions or applications for extension of time pursuant to
28 applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this Order must
 4 take care to limit any such designation to specific material that qualifies under the appropriate
 5 standards. To the extent it is practical to do so, the Designating Party must designate for
 6 protection only those parts of material, documents, items, or oral or written communications that
 7 qualify – so that other portions of the material, documents, items, or communications for which
 8 protection is not warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or boilerplate designations are prohibited. Designations that
 10 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 11 unnecessarily encumber or retard the case development process or to impose unnecessary
 12 expenses and burdens on other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
 14 designated for protection under this Order do not qualify for protection at all or do not qualify for
 15 the level of protection initially asserted, that Designating Party must promptly notify all other
 16 parties that it is withdrawing the original designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 18 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
 23 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 24 Producing Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL –
 25 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page
 26 that contains protected material.

27 A Party or Non-Party that makes original documents or materials available for
 28 inspection need not designate them for protection until after the inspecting Party has indicated

1 which material it would like copied and produced. During the inspection and before the
 2 designation, all of the material made available for inspection shall be deemed "HIGHLY
 3 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
 4 documents it wants copied and produced, the Producing Party must determine which documents,
 5 or portions thereof, qualify for protection under this Order. Then, before producing the specified
 6 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL,"
 7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL, –
 8 SOURCE CODE) to each page that contains Protected Material.

9 (b) for testimony given in deposition or in other pretrial or trial
 10 proceedings, that the Designating Party identify on the record, before the close of the deposition,
 11 hearing, or other proceeding, all protected testimony and specify the level of protection being
 12 asserted. When it is impractical to identify separately each portion of testimony that is entitled to
 13 protection and it appears that substantial portions of the testimony may qualify for protection, the
 14 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
 15 is concluded) a right to have up to 21 days after the Designating Party receives the written
 16 transcript to identify the specific portions of the testimony as to which protection is sought and to
 17 specify the level of protection being asserted. Only those portions of the testimony that are
 18 appropriately designated for protection within the 21 days shall be covered by the provisions of
 19 this Protective Order.

20 Transcript pages containing Protected Material must be separately bound by the
 21 court reporter, who must affix on each such page the legend "CONFIDENTIAL" or "HIGHLY
 22 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Designating Party.

23 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
 24 after receiving the transcript, if that period is properly invoked, that the entire transcript shall be
 25 treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

26 Any transcript that is prepared before the expiration of a 21-day period for
 27 designation shall be treated during that period as if it had been designated "HIGHLY
 28 CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After

1 the expiration of that period, the transcript or portions thereof shall be treated only as actually
2 designated.

3 Parties shall give the other parties notice if they reasonably expect a deposition,
4 hearing or other proceeding to include Protected Material so that the other parties can ensure that
5 only authorized individuals pursuant to Section 7 of this Order, including those who have signed
6 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), are present at those
7 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its
8 designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
9 ONLY."

10 (c) for information produced in some form other than documentary and
11 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
12 the container or containers in which the information or item is stored the legend
13 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
14 "HIGHLY CONFIDENTIAL – SOURCE CODE." If only a portion or portions of the
15 information or item warrant protection, the Producing Party, to the extent practicable, shall
16 identify the protected portion(s) and specify the level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive the Designating
19 Party's right to secure protection under this Order for such material. Upon timely correction of a
20 designation, the Receiving Party must make reasonable efforts to assure that the material is
21 treated in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
26 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
27 right to challenge a confidentiality designation by electing not to mount a challenge promptly
28 after the original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging and describing
3 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
4 written notice must recite that the challenge to confidentiality is being made in accordance with
5 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
6 challenge in good faith and must begin the process by conferring directly (in voice to voice
7 dialogue; other forms of communication are not sufficient) within 14 calendar days of the date of
8 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
9 confidentiality designation was not proper and must give the Designating Party an opportunity to
10 review the designated material, to reconsider the circumstances, and, if no change in designation
11 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
12 the next stage of the challenge process, *i.e.*, "Judicial Intervention," only if it has engaged in this
13 meet and confer process first, and only after the Designating Party has been given five calendar
14 days to respond to the Challenging Party's objection.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
16 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
17 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
18 calendar days of the initial notice of challenge or within 14 calendar days of the parties agreeing
19 that the meet and confer process will not resolve their dispute, whichever is earlier. Each such
20 motion must be accompanied by a competent declaration affirming that the movant has complied
21 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
22 Designating Party to make such a motion including the required declaration within 21 calendar
23 days (or 14 calendar days, if applicable) shall automatically waive the confidentiality designation
24 for each challenged designation. In addition, the Challenging Party may file a motion challenging
25 a confidentiality designation at any time if there is good cause for doing so, including a challenge
26 to the designation of a deposition transcript or any portions thereof. Any motion brought
27 pursuant to this provision must be accompanied by a competent declaration affirming that the
28 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 2 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 4 sanctions.

5 Unless the Designating Party has waived the confidentiality designation by failing
 6 to file a motion to retain confidentiality as described above, all parties shall continue to afford the
 7 material in question the level of protection to which it is entitled under the Producing Party's
 8 designation until the Court rules on the challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 11 disclosed or produced by another Party or by a Non-Party in connection with this case only for
 12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 13 disclosed only to the categories of persons and under the conditions described in this Order.
 14 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 15 section 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and
 17 in a secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 20 disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as
 22 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
 23 disclose the information for this litigation;

24 (b) the officers, directors, and employees of the Receiving Party to
 25 whom disclosure is reasonably necessary for this litigation;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
 27 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
 28 and Agreement to Be Bound" (Exhibit A);

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff, professional jury or trial consultants,
- 3 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
- 4 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 5 (f) during their depositions, witnesses in the action to whom disclosure
- 6 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
- 7 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court.
- 8 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
- 9 must be separately bound by the court reporter and may not be disclosed to anyone except as
- 10 permitted under this Protective Order.
- 11 (g) the author or recipient of a document containing the information,
- 12 the original source of the information or a custodian or other person who otherwise possessed or
- 13 knew the information.

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

15 ONLY" and "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless

16 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving

17 Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –

18 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

- 19 (a) the Receiving Party's Outside Counsel of Record in this action, as
- 20 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
- 21 disclose the information for this litigation and who have signed the "Acknowledgment and
- 22 Agreement to Be Bound" that is attached hereto as Exhibit A;
- 23 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
- 24 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be
- 25 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(1), below,
- 26 have been followed;
- 27 (c) the court and its personnel;
- 28

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(e) the author or recipient(s) (including "cc" and "bcc") of a document containing the information, the original source of the information or a custodian or other person who otherwise possessed, received, or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items to Experts.

(a) (1) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert's current resume, (3) identifies the Expert's current employer(s), (4) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years, and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraph may disclose the subject Protected Material to the identified Expert unless, within five court days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

1 (c) A Party that receives a timely written objection must meet and
2 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
3 matter by agreement within seven court days of the written objection. If no agreement is reached,
4 the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil
5 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission
6 from the Court to do so. Any such motion must describe the circumstances with specificity, set
7 forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk
8 of harm that the disclosure would entail, and suggest any additional means that could be used to
9 reduce that risk. In addition, any such motion must be accompanied by a competent declaration
10 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content
11 of the meet and confer discussions) and setting forth the reasons advanced by the Designating
12 Party for its refusal to approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
14 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
15 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

16 8. PROSECUTION BAR

17 Absent written consent from the Producing Party, any individual who receives access to
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
19 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
20 applications relating to the technology described and/or embodied in U.S. Patent Nos. 7,580,960;
21 7,584,216; 7,627,479; and 7,627,817 asserted in this action (including any patent or application
22 claiming priority to or otherwise related to the patents asserted in this action), or the technology
23 described and/or embodied in the source code at issue in this case, before any foreign or domestic
24 agency, including the United States Patent and Trademark Office. For purposes of this paragraph,
25 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting
26 the scope or maintenance of patent claims, including, for example, original prosecution, reissue
27 and reexamination proceedings. To avoid any doubt, "prosecution" as used in this paragraph
28 does not include representing a party challenging a patent before a domestic or foreign agency

1 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
2 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –
3 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information
4 is first received by the affected individual and shall end two (2) years after final termination of
5 this action.

6 9. SOURCE CODE

7 (a) To the extent production of source code becomes necessary in this
8 case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE
9 CODE" if it comprises or includes confidential, proprietary or trade secret source code.

10 (b) Protected Material designated as "HIGHLY CONFIDENTIAL –
11 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information, and may be disclosed only to
13 the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
14 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the following additional
15 restrictions:

16 (1) If a Party is requested to produce electronic copies of
17 material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE," any such
18 production shall be made on read-only media such as CDs or DVDs. The Designating Party shall
19 provide to the Receiving Party two (2) identical CDs or DVDs (or sets of CDs or DVDs if the
20 source code is too voluminous to fit on one disk) containing the requested materials.

21 (2) The Receiving Party shall only be permitted to load the
22 material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" contained in
23 each CD or DVD into the RAM of a single computer. Once the material is loaded into the RAM
24 of a single computer, the material may not be loaded into the RAM of another computer unless it
25 is first removed from the first computer. The material properly designated as "HIGHLY
26 CONFIDENTIAL – SOURCE CODE" from each CD or DVD may only be loaded onto one
27 computer at any given time. Thus, at any given time, the Receiving Party may have at most two
28 computers (one computer per each CD or DVD) containing material properly designated

1 "HIGHLY CONFIDENTIAL – SOURCE CODE."

2 (3) Any computer into whose RAM material properly
3 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is copied must be disconnected
4 from any and all networks before the material is copied onto the computer and must remain
5 disconnected for the duration of the time the material remains on the computer. Only after all
6 such material is removed from RAM and that computer has been shut down may any network
7 connection be made or restored.

8 (4) The Receiving Party shall be permitted to load appropriate
9 software onto a computer containing material properly designated as "HIGHLY
10 CONFIDENTIAL – SOURCE CODE". In the event that this requires the computer to be
11 connected to a network, the Receiving Party shall remove the material properly designated as
12 "HIGHLY CONFIDENTIAL – SOURCE CODE" from the RAM before installing such
13 software, and load the material properly designated as "HIGHLY CONFIDENTIAL – SOURCE
14 CODE" onto the computer only after the computer has been shut down and disconnected from
15 any network connection.

16 (5) Any computer into whose RAM material properly
17 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is copied must remain in the law
18 offices of the Receiving Party's Outside Counsel of Record and must be maintained in the direct
19 control of only those persons specified in Section 7.3 of this Order as properly having access to
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" material.

21 (6) For each computer into whose RAM material properly
22 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is loaded into, the Receiving
23 Party is required to secure the computer by creating a unique username and password for each
24 person specified in Section 7.3 of this Order as properly having access to "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" material. Any person who accesses the
26 computer is required to log out from the computer if such person leaves the room from which the
27 computer is located for more than one hour.

28 (7) For each computer into whose RAM material properly

1 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is loaded into, the Receiving
2 Party is required to maintain an electronic log of each person who accesses the computer which
3 shall include the date and time of when the person logged in and out of the secure computer. For
4 purposes of this provision, an event tracker on the computer's operating system that logs
5 username log in and log out times is sufficient.

6 (8) The Receiving Party shall be permitted to print a maximum
7 of two paper copies of portions of material properly designated as "HIGHLY CONFIDENTIAL –
8 SOURCE CODE" provided that each page of paper be printed on paper bearing a "HIGHLY
9 CONFIDENTIAL – SOURCE CODE" designation, include the filename of the file where the
10 printed material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
11 originated and include a Bates Number for each page printed. The Receiving Party must maintain
12 a log of any portions of material properly designated as "HIGHLY CONFIDENTIAL – SOURCE
13 CODE" that includes the filename of the file where the printed material originated, the
14 corresponding Bates Number or Bates Range, the date printed, the name of the person printing the
15 material, and the name of the person to whom the printed copy is provided.

16 (9) The Receiving Party must maintain all paper copies of any
17 printed portions material properly designated as "HIGHLY CONFIDENTIAL – SOURCE
18 CODE" in a secured, locked area in the law offices of the Receiving Party's Outside Counsel of
19 Record and must at all times be under the control of persons specified in Section 7.3 of this Order
20 as properly having access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
21 material. The Receiving Party shall not create any electronic or other images of the paper copies
22 and shall not convert any of the information contained in the paper copies into any electronic
23 format. The Receiving Party shall only make additional paper copies if such additional copies are
24 (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's
25 expert report), (2) necessary for deposition, or (3) necessary for use at a hearing or at trial. Any
26 paper copies used during a deposition shall be retrieved by the Producing Party at the end of each
27 day and must not be given to or left with a court reporter or any other individual.
28

1 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL,”
 5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 6 SOURCE CODE” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification
 8 shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
 10 order to issue in the other litigation that some or all of the material covered by the subpoena or
 11 order is subject to this Protective Order. Such notification shall include a copy of this Protective
 12 Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be
 14 pursued by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the
 16 subpoena or court order shall not produce any information designated in this action as
 17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 18 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
 19 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 20 permission. The Designating Party shall bear the burden and expense of seeking protection in that
 21 court of its confidential material – and nothing in these provisions should be construed as
 22 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 23 another court.

24 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
 25 IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced in
 27 this action by a Non-Party and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL
 28

1 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such
 2 information produced in connection with this litigation by Non-Parties is protected by the
 3 remedies and relief provided by this Order. Nothing in these provisions should be construed as
 4 prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to
 6 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
 7 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
 8 Party shall:

9 (1) promptly notify in writing the Requesting Party and the
 10 Non-Party that some or all of the information requested is subject to a confidentiality agreement
 11 with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
 13 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
 14 description of the information requested; and

15 (3) make the information requested available for inspection by
 16 the Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this
 18 Court within 14 calendar days of receiving the notice and accompanying information, the
 19 Receiving Party may produce the Non-Party’s confidential information responsive to the
 20 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
 21 produce any information in its possession or control that is subject to the confidentiality
 22 agreement with the Non-Party before a determination by the Court. Absent a court order to the
 23 contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of
 24 its Protected Material.

25 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 27 Material to any person or in any circumstance not authorized under this Protective Order, the
 28 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
2 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
3 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
4 Be Bound" that is attached hereto as Exhibit A.

5 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order that provides for production without prior privilege review. Pursuant to Federal Rule of
12 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
13 communication or information covered by the attorney-client privilege or work product
14 protection, the parties may incorporate their agreement in the protective order submitted to the
15 court.

16
17 14. MISCELLANEOUS

18 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the court in the future.

20 14.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item on any ground not addressed in this Protective Order.
23 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
24 material covered by this Protective Order.

25 14.3 Export Control. Disclosure of Protected Material shall be subject to all
26 applicable laws and regulations relating to the export of technical data contained in such
27 Protected Material, including the release of such technical data to foreign persons or nationals in
28

1 the United States or elsewhere. The Producing Party shall be responsible for identifying any such
2 controlled technical data, and the Receiving Party shall take measures necessary to ensure
3 compliance.

4 14.4 Filing Protected Material. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested persons, a
6 Party may not file in the public record in this action any Protected Material. A Party that seeks to
7 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
8 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
10 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
11 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
12 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court,
13 then the Receiving Party may file the Protected Material in the public record pursuant to Civil
14 Local Rule 79-5(e) unless otherwise instructed by the court.

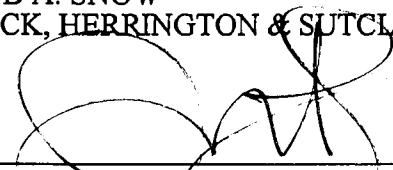
15 15. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
17 Receiving Party must return all Protected Material to the Producing Party or destroy such
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the Protected
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
28 product, and consultant and expert work product, even if such materials contain Protected

1 Material. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3 ~~November~~ ^{December} 1, 2010
4 Dated: ~~November~~ 1, 2010

G. HOPKINS GUY, III
JACOB M. HEATH
JACOB A. SNOW
ORRICK, HERRINGTON & SUTCLIFFE LLP



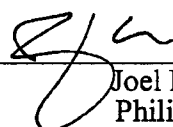
G. Hopkins Guy, III
Jacob M. Heath
Jacob A. Snow

Attorneys for Plaintiffs
TransPerfect Global, Inc.;
TransPerfect Translations International, Inc.; and
Translations.com, Inc.

12 Dated: November 30, 2010

JOEL FREED

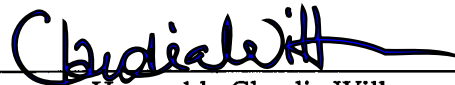
PHILIP OU
MCDERMOTT WILL & EMERY LLP



Joel Freed
Philip Ou
Attorneys for Defendants
MotionPoint Corporation

20 IT IS SO ORDERED.

22 DATED: 12/7/2010



Honorable Claudia Wilken
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I acknowledge that I, _____ [Print Name],
of _____ [Place and
Position of Employment], am about to receive confidential information obtained in the course of
discovery in this action. I certify that I understand that such confidential information will be
provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER entered by
the United States District Court for the Northern District of California on September __, 2010 in
Case No. CV 10-02590 CW.

I further represent that I have been given a copy of and have read that PROTECTIVE
ORDER and that I agree to be bound by all of its applicable terms. I also understand that
documents and/or information having any confidential designation, and all copies, summaries,
notes and other records that may be made regarding such documents and/or information, shall be
disclosed to no one other than persons qualified under the PROTECTIVE ORDER to have access
to such information.

I understand and acknowledge that violation of this Acknowledgement And Agreement
To Be Bound or the PROTECTIVE ORDER may be punishable by contempt of Court and, thus, I
expressly agree to be subject to the personal jurisdiction of the Northern District of California.

Date: _____

Signature for [Name]

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